

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2884 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHREE SHARDA EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR AD OZA for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/06/2001

ORAL JUDGEMENT

#. In this petition under Article 226 of the Constitution, the petitioner-institution intending to establish a secondary school in village Sengarash in Kutiyana Taluka of Porbandar District has challenged the

order dated 26-7-1999 passed by the Gujarat Secondary Education Board rejecting the petitioner's application for permission to establish a secondary school in the aforesaid village, as confirmed by the State Government by order dated 13-12-1999 at Annexure 'A' to the petition. The petitioner's application has been rejected on the following two grounds:

- (i) the petitioner institution does not have adequate building facilities as required by the Rules, and
- (ii) the need for establishing a secondary school in the concerned area has not been established.

#. As far as the first ground is concerned, Ms. Sejal Mandavia, learned counsel for the petitioner states that the petitioner-institution proposes to construct a building with adequate space and facilities, copy of the construction plan for total construction of 4725 sq.ft. on land admeasuring 1900 sq.yds. is shown for the perusal of the Court. Learned counsel states that the institution cannot take risk of investing huge amount in such construction unless the institution is first granted the permission to establish the school, and therefore, as a temporary measure the institution has taken on rent the premises for which a rent note dated 30-3-1999 is produced at Annexure 'F' to the petition. Learned counsel states that even if the objection raised by the authorities that the rented premises are not adequate is correct, the petitioner institution is prepared to take additional premises on rent so that this institution does have required construction area as well as playground as required by the Rules.

#. As far as the second objection about absence of need in the area is concerned, the learned counsel submits that admittedly when a village has a population of 2350 and the village also has a primary school upto Std. VII it goes without saying that the students passing out from Std.VII would like to study in Stds. VIII, IX and X in the same village. It is stated that at present the students passing from Std.VII are required to travel a long distance of 10 to 15 kms. for attending the secondary school with a result that all the students passing out from Std.VII are not able to prosecute their studies in secondary schools especially the parents of girl students are reluctant to send their daughters to far away villages for the purpose of education. In this view of the matter, it is submitted that the impugned order suffers from the vice of non-application of mind.

#. On the other hand, Mr. Dave appearing for Mr. Oza

for Secondary Education Board and Ms. Nandini Joshi learned AGP appearing for the State Government have supported the decision of the authorities and they have submitted that when the institution does not have adequate premises it cannot be granted permission to establish a secondary school. It is further submitted that there are schools in nearby villages and therefore there is no need for establishing a secondary school in this particular village.

#. Having heard the learned counsel for the parties and having perused the memo of the petition and reply affidavit filed on behalf of the Gujarat State Secondary Education Board, it appears to the Court that while there may be some justification in the first objection raised on behalf of the authorities about adequate premises, the submission coming from the learned counsel for the petitioner that the petitioner-institution has already prepared the plans for construction of 4725 sq.ft. of land admeasuring 1900 sq.yds. deserves consideration on the part of the authorities particularly when the institution is prepared to take on rent additional premises so as to meet with the requirement prescribed by the Rules and to enable the petitioner-institution to persuade the authorities to take a more pragmatic view.

#. As far as the second objection is concerned, there appears to be prima-facie considerable substance in the submission made by the learned counsel for the petitioner that when the village already has an existing primary school upto Std. VII naturally the students passing out from the said school would like to join a secondary school in the same village more particularly the girl students and that absence of a secondary school in the same village may dissuade parents of girl students from sending their daughters to secondary schools in other villages which are admittedly at a distance of 9 to 15 kms..

#. In view of the above, the impugned decisions being the order dated 26-7-1999 of the Gujarat Secondary Education Board and the order dated 30-12-1999 of the State Government, Education Department at Annexure 'A' to the petition are quashed and set aside in so far as the authorities have dismissed the petitioner's application on the ground that the need for establishing a secondary school in the village is not established. However, the authorities shall reconsider the matter in light of the observations made hereinabove after the petitioner-institution produces necessary material before the authorities that the petitioner-school has acquired

such adequate premises on rent for establishing a secondary school and the petitioner-institution also produces the necessary evidence to show that the petitioner-institution does have funds for putting up the proposed construction as stated along with the compliance of other requirements prescribed by the Rules. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent only with no order as to costs.

zgs/-